Eldorado Tool, Division of Quamco, Inc. *and* International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW, AFL–CIO. Case 34–CA–6966–1

November 9, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On August 12, 1996, Administrative Law Judge William F. Jacobs issued the attached decision. The General Counsel, the Respondent, and the Charging Party filed exceptions and supporting briefs. The Respondent filed an answering brief to the General Counsel's exceptions, and the General Counsel and the Charging Party filed answering briefs to the Respondent's exceptions.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions only to the extent consistent with this Decision and Order.

This case involves allegations of unfair labor practices arising out of the Respondent's response to an organizing campaign. Prompted by a group of employees who met and voted to seek union representation by the UAW, an organizing campaign began in early January, 1995.[2] The Union obtained authorization cards from a majority of the production and maintenance employees and, on January 13, requested that the Respondent recognize it as the exclusive bargaining representative for those employees. The Union also filed a petition for representation on January 13. The Respondent declined to recognize the Union and instead began its own campaign against the Union. The Union lost an election held on March 2, 1995, and filed objections.[3]

We adopt the judge's findings that the Respondent violated Section 8(a)(1) of the Act in several instances and that it violated Section 8(a)(3) by failing to implement its job reevaluation program. The judge found that, before the election, the Respondent violated Section 8(a)(1) of the Act when, (1) Ken Leconte, its vice president of operations, twice threatened employees, assembled at a meeting, with loss of benefits if they selected the Union as their collective-bargaining representative; (2) Judith Johnson, its human resource director, told an employee that employees would lose all their benefits if the Union got in and that the plant would close because of the Union; (3) Peter Rudd, its former president, and then Vice President Kenneth King, threatened employees with plant closure if they selected the Union as their collective-bargaining representative; and (4) foreman Richard Cuff sent employees a letter threatening irreparable damage to the business and job loss if the Union were brought in. We adopt the judge's findings of these Section 8(a)(1) violations that occurred in the months before the election.

The General Counsel and the Charging Party excepted to the judge's failure to find that the Respondent violated Section 8(a)(1) by its ''UAW Wall of Shame'' display, and by its February 6, 13, and 15 letters to employees. We find merit in these exceptions.

I. UAW WALL OF SHAME

Simultaneous with the beginning of its letter campaign opposing the Union, the Respondent began creating its ''UAW WALL OF SHAME''—a display naming plants with UAW-represented employees that had closed. Beneath a computer paper banner reading ''PLANT CLOSURES: UAW WALL OF SHAME'' were tombstones printed on computer paper approximately 2-foot wide and 3-foot long. Each tombstone had ''RIP'' with the name of the UAW-represented plant that had closed. Every day or two, the Respondent would add another tombstone with the name of another closed plant. On March 1, the day before the election, the Respondent posted a tombstone with the name ''Eldorado'' on it, and a question mark in the middle. No member of management ever explained the meaning of the display to any employee, although the names of closed plants depicted on the tombstones were mentioned by Respondent Vice President Leconte in a speech to employees in connection with a statement that the Union cannot promise job security.

The judge found that the display was factually accurate; the plants specifically mentioned in the display were closed, and the employees had been represented by the UAW at the time of their closing. Because, in the judge's view, there was no prediction that the same

[1] The Respondent excepted to the make-whole remedy recommended for its failure to implement its job reevaluation program. It contends that the judge's proposed remedy cannot be implemented because the plan was not complete, and should not be implemented because it might result in some employees being doubly enriched by receiving the traditional pay increase and the new job reevaluation increase. We note that the judge found that the plan was in fact complete and that on February 2, 1995, the Respondent posted a notice announcing both the completion of the program and its decision not to introduce it at that time. The Respondent may raise in compliance the issue as to double payment for some employees, although it may not relitigate the finding that the plan had been completed by February 2.

[2] All dates herein are in 1995 unless otherwise indicated.

[3] On September 15, 1997, the Board issued an Order Granting a Motion to Sever and Withdraw Exception in which the Charging Party and the General Counsel requested withdrawal of the 8(a)(5) allegation and their exceptions as they relate to the bargaining order. They further requested that the Board adopt the judge's recommendation that the March 2, 1995 election in Case 34–RC–1312 be set aside and that the Regional Director be directed to conduct a second election. Pursuant to the September 15 Order, Case 34–RC–1312 was severed and remanded to the Regional Director for further appropriate action. The Respondent has not excepted to the judge's recommendation.

thing would occur at Respondent's facility, the judge found that these factually accurate statements were protected under Section 8(c).[4] The judge viewed the question mark below the Respondent's name on the tombstone as illustrating the Respondent's unwillingness to make a prediction about the fate of the Respondent. He also found, however, that the title of the display clearly implied that the closings were the fault of the UAW. He found that the Union had the opportunity to and did respond to the campaign, and that the Respondent had no further duty to ''sanitize'' its message and ''become an apologist for the Union.''

The General Counsel and the Charging Party except. They contend that the Respondent failed to state the specific reason for the closing of the companies depicted in the UAW Wall of Shame display, and that the only inference that can be drawn from the display was that the UAW caused the plants to close. They further contend that the question mark on the display the day before the election was coercive. We find merit in the exceptions.

We agree with the judge that the title of the display, ''UAW Wall of Shame,'' clearly implies that the closings were the fault of the UAW.[5] We reject, however, the judge's finding that the question mark on the Eldorado tombstone indicated an unwillingness to predict Eldorado's fate if the Union were selected as the employees' collective-bargaining representative and his suggestion that it was the Union's responsibility to refute this threat.

We find that the logical inference to be drawn from the expanding cemetery of UAW-represented plants is that the same fate of plant closure and job loss awaited Eldorado. We do not view the question mark as insulating the Respondent from the conclusion that the display constituted an implicit threat. There is no evidence that the employees had ever been told before that the future of their plant was in doubt or that the Respondent had any economic reasons for considering closing the plant. Thus, the clear implication of the display was that the fate of the plant would be thrown into question if, and only if, the employees chose union representation. As the judge found, no member of the Respondent's management ever sought to clarify the message, or to assure employees that it was not predicting that the same fate awaited Eldorado as had befallen other plants. Thus the Respondent did not merely chronicle the closing of nearby businesses where the Union had a presence. Rather, its top officials actually threatened closure if the union were selected. It is in this context that the Respondent's ''Wall of Shame'' must be evaluated. In our view, that evaluation is that the Respondent was clearly implying that the employees had the fate of the Company in their hands and the question was whether or not the employees would choose to avert a closing or job loss by voting against the Union.

An employer is free to predict the economic consequences it foresees from unionization so long as the prediction is ''carefully phrased on the basis of ''objective fact to convey [its] belief as to demonstrably probable consequences beyond [its] control.'' *Gissel Packing Co.*, 395 U.S. 575, 618 (1969). Without the necessary objective basis, such statements are not protected by Section 8(c) of the Act. In the instant case, the Respondent offered no explanation of the basis for its assertion that the UAW was to blame for the closings of the other plants. Nor did it offer any objective facts as the basis for a belief that, for reasons beyond its control, selection of the UAW as the employees' bargaining representative might well cause the Eldorado plant to suffer the same fate. In the absence of such an explanation, based on objective facts, and noting particularly that top employer officials were otherwise threatening closure, the message conveyed to employees was not that economic realities might lead the plant to close, but that the Respondent might retaliate against them and close the plant merely because they chose union representation. We therefore find that the ''UAW Wall of Shame'' campaign in the context presented here, constituted an unlawful threat of plant closure, in violation of Section 8(a)(1).[6]

Our dissenting colleague contends that the ''Wall of Shame'' campaign was protected by the First Amendment Section 8(c) of the Act, and was therefore, not unlawful. However, the Supreme Court in *Gissel* has taken these protections into account in enunciating the standard that we have discussed and applied above. In that regard, our colleague's characterization of *Gissel*

[4] Sec. 8(c) states:

> The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

[5] Our dissenting colleague's statement that the display was ''clearly intended to imply that these plants closed despite the fact that the employees were represented by the UAW'' is simply not a reasonable inference to be drawn from the record evidence. There would be no reason for the Respondent to attribute ''shame'' to the UAW if it were not implying that the Union was responsible for the closings.

[6] In so finding, we do not hold that the Respondent's assertion that the Union was to blame for the closing of the other plants was in and of itself unlawful, or that the Respondent was independently required to articulate an objective basis for making such a claim. Generally speaking, such statements are in the nature of campaign propaganda which the Board does not regulate. *Midland National Life Insurance Co.*, 263 NLRB 127 (1982). However, where, as here, such a claim is made in a context which implies a prediction that the employer's plant will also close if the employees choose union representation, the employer must, as noted above, articulate an objective basis for the prediction. In this case, that means an objective basis for believing that whatever the union allegedly did to cause the other plants to have to be closed is likely also to occur at the employer's plant, for reasons beyond the employer's control.

as holding that the Board ''may limit what would otherwise constitute employer First Amendment rights'' is erroneous. The Court in *Gissel* explicitly stressed the point that Section 8(c) ''implements'' the First Amendment, but that the First Amendment does not protect a ''threat of reprisal or force or promise of benefit.'' 395 U.S. at 617–618. Accordingly, the Respondent did not have a First Amendment right to threaten its employees with plant closure, and our finding of a Section 8(a)(1) violation does not constitute a ''limitation'' of the Respondent's First Amendment rights.

Contrary to the dissent, we do not consider it a defense to the Respondent's unlawful conduct that the Union distributed a flyer responding to the ''Wall of Shame'' display. An employer's threat to close a plant if the employees vote for union representation cannot be effectively countered by anything the union might say, since the employees are well aware that it is the employer, not the union, that has control of that decision. We therefore reject our colleague's suggestion that we need not be concerned about the content of employer speech as long as the union also has ''a full opportunity to communicate with employees.''

II. LETTERS OF FEBRUARY 6, 13, AND 15

In early February, the Respondent began sending antiunion literature to its employees at home. A letter dated February 6 from the Respondent's vice president of operations, Leconte, stated in relevant part, ''The UAW organizer may claim that you cannot lose in negotiations. Don't tell that to the UAW employees of Delco—they lost their jobs.'' In a February 13 letter Leconte referred to five area plants, including GM/Delco, that had closed, and advised employees, ''VOTE 'NO' TO THE UAW AND JOB INSECURITY.''(Emphasis in original.) And in a letter dated February 15, Leconte set out 15 questions that employees should ask the UAW organizer before the election. Question number three states: ''Will the UAW guarantee that I won't lose my job just like the UAW-represented employees at Delco, Century Brass, and the Torin [sic] Company?''

The judge found that the statements in the letters were factually accurate, i.e., that the plants had been unionized and had closed down. He found that the letters contained no predictions, explicit or implicit, that if the employees voted the Union in, the Respondent would necessarily or probably suffer a similar fate. Therefore, he found that it was not necessary for the Respondent to provide any objective basis for the statements. He dismissed the complaint allegations.

The General Counsel and the Charging Party except. They argue that the letters are unlawful threats of job loss and fail to state an objective basis for the Respondent's implicit claim that unionization will imperil job security for reasons beyond the Respondent's control. We find merit in the exceptions.

The February 6 letter warns that the Delco employees lost in negotiations conducted by the UAW and as a result lost their jobs. The February 13 letter, again invoking the Delco plant closure, urges employees to vote against job insecurity by voting against the UAW. The plain implication is that a vote for the UAW is synonymous with job insecurity.

These letters were not restricted to conveying the legitimate message that a union could not guarantee job security against economic adversity. Instead, they strongly suggested that Eldorado employees would jeopardize the job security that they had—i.e., that their jobs would be less secure, if they chose to be represented by the Union. The letters repeatedly refer to the closure of the GM/Delco plant which had been organized by the UAW and, by equating a vote for the UAW with a vote for job insecurity, imply that the same scenario is likely to occur at Eldorado if the Union wins the election. As discussed above, while an employer is free to make predictions as to what it foresees will be the economic consequences of unionization, a prediction that unionization may cause job insecurity must be carefully phrased on the basis of objective facts so as to avoid any implication that the employer is threatening to act or not act in retaliation for union activities rather than for economic reasons. *Gissel*, supra. Accordingly, we find that the February 6 and 13 letters constituted unlawful threats in violation of Section 8(a)(1).

Similarly, the February 15 letter, continuing the pattern, cryptically suggests that employees should ask the Union organizer whether the UAW could guarantee job security. We find that this message echoed and reinforced the message of the two previous letters, i.e., that if employees voted for the UAW they risked plant closure and loss of jobs. In the absence of the Respondent articulating some objective basis for this claim,[7] we find that it constitutes an unlawful threat in violation of Section 8(a)(1).[8]

Based on the above, we reverse the judge and find that the Respondent violated Section 8(a)(1) by conveying the message to employees during the election campaign through its ''UAW Wall of Shame'' and its February 6, 13, and 15 letters to employees that the

[7] We agree with our colleague that *Gissel* does not mandate that the Respondent give the employees ''exhaustive argumentation or verification of positions'' or become an ''apologist'' for the Union. What *Gissel* does require, however, and our colleague ignores, is that any prediction made by the Respondent ''be carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control . . .'' *Gissel*, 395 U.S. at 618. The Respondent failed to satisfy that requirement.

[8] We need not amend the judge's Conclusions of Law or recommended Order because they already refer to threats of plant closure and loss of jobs.

plant would close and jobs would be lost if the Union won the election.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent Eldorado Tool, Division of Quamco, Inc., its officers, agents, successors, and assigns, shall take the action set forth in the Order.

CHAIRMAN GOULD, concurring in part and dissenting in part.

I agree with my colleagues' adoption of the administrative law judge's findings that the Respondent violated Section 8(a)(1) of the Act in several instances and that it violated Section 8(a)(3) by failing to implement its job reevaluation program. Contrary to my colleagues, however, I also agree with the judge that the Respondent's ''Wall of Shame'' display is a not a threat of plant closure and that the Respondent's letters of February 6, 13, and 15 are not threats of job loss. To be sure, it is a violation of the Act for an employer to threaten, either directly or indirectly, to close its facility if its employees select a union as their collective bargaining representative. It is not unlawful, however, for an employer to make reference to what the employer perceives to be a union's record at other plants. Such references are a fact of industrial life, frequently part of the rough and tumble of electioneering, and the Board cannot and should not be responsible for policing the objective considerations relied on by an employer. If the employer's statements are not complete or are inaccurate, it is for the union to respond. For the reasons discussed below, I would adopt the judge's dismissal of these allegations of the complaint.

In the instant case, beginning in February and continuing until the March 2 election, the Respondent maintained two identical displays, each with the heading: ''PLANT CLOSURES: UAW WALL OF SHAME.'' Every day or so, the Respondent added a tombstone to the display bearing the letters ''R.I.P.'' and the name of a closed company until five tombstones were placed on the wall. On March 1, the last tombstone was added bearing the name of the Respondent, Eldorado, along with a question mark. During the same period, the UAW countered through the distribution of a flyer depicting tombstones each with the letters ''RIP'' and an alleged grievance and of letters to employees stating, in relevant part, ''If a company closed because of a union, why doesn't it read 'union at fault causes Robert Shaw to close?' How many close or move out that have no union?'' Three separate letters from the Respondent to employees dated February 6, 9, and 15, referred to area UAW plants that had partially or totally closed. There is no dispute as to the accuracy of these facts, since the plants mentioned were unionized and did close, in whole or in part. None of the letters contained a direct prediction of plant closure if the Respondent's employees voted for the Union.

It is axiomatic that freedom of expression is secured by both the First Amendment and the National Labor Relations Act. The purpose of this constitutional safeguard is ''to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.''[1] And it represents a ''profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide-open.''[2] The Court has also found that constitutional protection does not turn upon the ''truth, popularity, or social utility of the ideas and beliefs which are offered.''[3] As Justice Douglas stated in his dissent in *Beauharnais v. Illinois*, ''if in any case other public interests are to override the plain command of the First Amendment, the peril of speech must be clear and present, leaving no room for argument, raising no doubts as to the necessity of curbing speech in order to prevent disaster.''[4]

It is equally well settled that an employer has a free speech right to communicate his views to his employees. In 1941, the Supreme Court recognized that employers have a constitutional right to express opinion that are noncoercive in nature.[5] Subsequently with the enactment of the Taft-Hartley amendments to the Act, Congress provided through Section 8(c) that

> The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such

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[1] *Roth v. United States*, 354 U.S. 476, 484 (1957).

[2] *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). As I noted in my concurring opinion in *Caterpiller, Inc.*, 321 NLRB 1178 at 1184 (1996), in the context of discussing Board and court precedent with respect to whether employee activity that seeks to influence management policy is protected, the First Amendment decisions of the Court in *New York Times v. Sullivan* and its progeny promote wide open and robust speech as part of good public policy and the reality of the employment relationship is that discussion between unions and management is rough and tumble.

[3] Id. at 271 (quoting *N.A.A.C.P. v. Button*, 371 U.S. 415, 445 (1963)). In *Novotel New York*, 321 NLRB 624 (1996), we were mindful of the principles of *Button* regarding the rights of free speech, assembly, and access to the courts in finding that a union's provision of legal services to employees they were seeking to organize to investigate, prepare, and file a lawsuit asserting the employees' wage claims under the Fair Labor Standards Act was protected by the First Amendment and the Act. Cf. H. Kalven, The Negro and the First Amendment (Ohio State University Press 1965).

[4] 343 U.S. 250, 284–285 (1952). Beauharnais serves as a vivid paragon of the stresses and conflicts that may be involved in First Amendment cases. See William B. Gould, Book Review, 45 Cornell L.Q. 163 (1959) (reviewing Vern Countryman, Ed., Douglas Of The Supreme Court (1959)).

[5] *NLRB v. Virginia Electric & Power Co.*, 314 U.S. 469 (1941).

> expression contains no threat of reprisal or force or promise of benefit.

However, the Court has also recognized that ''an employer's rights cannot outweigh the equal rights of the employees to associate freely, as those rights are embodied in Section 7 and protected by Section 8(a)(1) and the proviso to Section 8(c).''[6] Thus, an employer is free to communicate his general views about unionization or his specific views about a particular union as long as that communication is neither a threat of reprisal or a promise of benefits.[7]

Further, Board precedent is clear that an employer is permitted by Section 8(c) to present its view of the economic realities of unionization. In *Blue Grass Industries*,[8] relied on by the judge, the Board found an employer's factually accurate references to plant closings and strikes to be permissible under Section 8(c) in the absence of any prediction that the same thing would occur at the employer's facility. The *Blue Grass* employer presented a slide show that clearly portrayed the union's role at the nearby unionized plants as well as that of a particular union organizer, in a negative light. The Board dismissed the complaint allegation, noting that the events depicted in slides occurred and the employer did not state that the same sort of events would occur at its facility if the employees selected the union.

In the instant case, the ''Wall of Shame'' and the February 6, 13, and 15 letters are permissible references by the Respondent to its opponent's record at other facilities in the area and do not constitute either direct or indirect threats of job loss or plant closure.[9] The judge found and my colleagues concede that employees at the plants referred to by the Respondent were represented by the UAW and that these plants partially or completely closed. By including the ''Eldorado?'' on the last tombstone, the Respondent raised a question as to what might happen at its facility in the event the Union was selected. In its display, the Respondent was raising the UAW's past history and presumably asking employees to consider what that history means in terms of what will happen if they select the Union. So long as the employer does not project an inexorable set of events or circumstances which require plant closure or other adverse events, I would hold that coercion or predicted retaliation is not present.[10]

Under *Gissel*, the Board may limit what would otherwise constitute employer First Amendment rights only to condemn three types of statements: promises of benefits; threats of reprisals; and predictions of adverse economic consequences suggesting that the action will not occur out of economic necessities but because the employer will seek to penalize concerted activity. The Respondent's statements fall into none of these categories. The ''Wall of Shame'' and the February 6, 13, and 15 letters truthfully name a number of plants organized by the UAW which partially or fully closed. Although clearly intended to imply that these plants closed despite the fact that the employees were represented by the UAW, the display and letters are not thorough and sophisticated assessments of the basis for the closures of the named plants. Contrary to the my colleagues, *Gissel* does not mandate such detailed or exhaustive argumentation or verification of positions, and I see no basis for compelling the Respondent to establish that the economic situation at the closed plants was similar to that at Eldorado before making a reference to the union's record. The Respondent's assertion that the presence of the UAW either contributed to or at the very least failed to avert a number of plant closures does not lack the ''basis of objective fact'' required by *Gissel* merely because there may have been other causes of those closures.[11]

There is nothing in the display or the letters which indicate that the Respondent will retaliate against employees for union activities. If the Respondent's statements are not complete or accurate,[12] it is not the Board's role to compel the Respondent to become an apologist for the Union or any party. In such instances, the burden falls on the UAW to respond and the record indicates that it did so.

In my view, the proper response to any speech, accurate or inaccurate, is more speech not less speech and the Board should be concerned only with a union's

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[6] *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 617 (1969).

[7] Id.

[8] 287 NLRB 274 (1987).

[9] Contrary to the suggestion of my colleagues, an employer is not required to have told employees that the future of its plant is in doubt before raising an issue with respect to a union's record in representing employees at other employers or plants.

[10] To the extent this view is inconsistent with prior Board cases, I would overrule that precedent. Cf. *Bi-Lo*, 303 NLRB 749 (1991), enfd. 985 F.2d 123 (4th Cir. 1992).

Unlike my colleagues, I am unwilling to find that the inclusion of ''Eldorado?'' on the last tombstone amounts to a threat of plant closure on the basis of the Respondent having engaged in other threats of plant closure.

[11] Thus, contrary to my colleagues' contention, I have not ignored the requirements of *Gissel* that the employer's statements be carefully phrased and based on objective fact. Rather, as stated above, I find that the Respondent's statements have satisfied these requirements.

[12] In 1982 with its decision in *Midland National Life Insurance Co.*, 263 NLRB 127, the Board abandoned its policy of regulating misrepresentations in election campaigns. The Board stated that it would ''no longer probe into the truth or falsity of the parties' campaign statements.'' 263 NLRB at 130.

potential inability to respond to an employer's statements about its record. The need to regulate the content of an employer's speech diminishes as the union's opportunity to reply is enhanced.[13] Thus, our efforts should be directed toward ensuring that unions as well as employers have a full opportunity to communicate with employees. In this way, we achieve the statutory goal of ensuring that all employees are fully informed about the arguments concerning representation and can freely and fully exercise their Section 7 rights.

The Board must protect a union's ability to present its views by those means of communication that remain available to it within the confines of the Court's decision in *Lechmere, Inc. v. NLRB*, where the Court established the broad presumption that nonemployee union organizers do not have access to private property.[14] One method that has taken on greater significance post-*Lechmere* is the *Excelsior* list and the Board has recognized the importance of the *Excelsior* list in recent decisions.[15] In *Mod Interiors*,[16] the Board majority found that an employer failed to comply with the *Excelsior* requirement where the eligibility list contained a significant number of inaccurate addresses, the corrected eligibility list was only available to the union for eight days before the election, and the election was decided by a close margin. In my concurring opinion in *Fountainview Care Center*,[17] I stated my view that the omission of names from the *Excelsior* list constitutes objectionable conduct where the omitted employees were determinative votes. In such circumstances, the potential harm from the omission is the prejudice to the union's ability to present its position to all unit employees. The post-*Lechmere* reality is that, in virtually every circumstance, nonemployee union organizers may only have access to employees through the use of the *Excelsior* list.

In a related area, in my concurring opinion in *Technology Service Solutions*,[18] I noted that, in the circumstances of that case, employees' efforts to obtain union representation are severely hampered because, due to the employer's unusual operational structure, unit employees are so dispersed and little known to each other that they are effectively deprived of both their right to discuss organization amongst themselves[19] and their right to learn the advantages of self-organization from union representatives. I stated that the General Counsel had established a prima facie case that the Respondent violated Section 8(a)(1) by denying the union's request for the unit employees' names and addresses. Such disclosure of names and addresses is fundamental to the statutorily provided opportunity for employees to engage in self organization activity and is a less intrusive measure than compelling the entry of union organizers onto the employer's property—and extant Supreme Court authority establishes the propriety of broad union access to names and addresses.

In summary, in my view, the Board should not seek to regulate either the employer or the union's speech absent coercion but should instead seek the full utilization of existing methods of communication so that both sides can have full and wide-open discussion of ''all the arguments for, as well as against unionization.''[20] Accordingly, I would adopt the judge's dismissal of the complaint allegations that the Respondent's ''UAW Wall of Shame'' was an unlawful threat of plant closure and job loss and that the letters from the Respondent to its employees dated February 6, 13, and 15 unlawfully threatened employees with job loss if they selected the Union.

[13] The involvement of the Board in the regulation of campaign speech and propaganda is at best a wasting asset, and at worst, fundamentally counterproductive because of the litigation and consequent delay to the electoral process spawned by it. See Gould, Agenda for Reform: The Future of Employment Relationships and the Law (MIT Press) (1993) at 156–157; 233. Cf. Bok, The Regulation of Campaign Tactics in Representation Elections under the National Labor Relations Act, 78 Harv. L. Rev. 38 (1964).

[14] 502 U.S. 527 (1992). We have applied *Lechmere* and its logical implications to nonemployee union organizers' attempts to have access to private property to reach the public as well as employees. See my concurring opinions in *Loehmann's Plaza*, 316 NLRB 109, 114 (1995), and *Leslie Homes, Inc.*, 316 NLRB 123, 131 (1995).

[15] Although in *Lechmere*, the Supreme Court articulated a presumption against nonemployee union organizing access to company property, the Court upheld in *NLRB v. Wyman-Gordon*, 394 U.S. 759 (1969), union access to names and addresses under the Board's *Excelsior* rule.

[16] 323 NLRB No. 33 (Aug. 7, 1997).

[17] 323 NLRB No. 172, slip op. at 2 (June 16, 1997).

[18] 324 NLRB No. 49, slip op. at 5 (Aug. 22, 1997).

[19] In *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 803 (1945), the Supreme Court held that ''[n]o restriction may be placed on the employees' right to discuss self-organization among themselves, unless the employer can demonstrate that a restriction is necessary to maintain production or discipline.''

[20] *Excelsior Underwear*, 156 NLRB 1236, 1240 (1966). Again, this view is consistent with avoiding delay and wasteful litigation in resolving representation questions, and elimination of the regulation of speech in favor of more mechanistic rules. See Gould, Agenda for Reform, supra, fn.12. This is also consistent with the broad right of union activity on company property advocated in Gould, The Question of Union Activity on Company Property, 18 Vand. L. Rev. 73 (1964); and Gould, Union Organizational Rights and the Concept of ''Quasi Public'' Property, 49 Minn. L. Rev. 506 (1965). Of course, in this regard, this reasoning is undercut by *Lechmere*.

Darryl Hale, Esq. and *Margaret LaReau, Esq.*, for the General Counsel.

Jay M. Presser, Esq. and *Richard Stubbs Jr., Esq. (Skoler, Abbott & Presser)*, of Springfield, Massachusetts, for the Respondent.

Gregg D. Adler, Esq. (Gould, Livingston, Adler & Pulda), of Hartford, Connecticut, for the Charging Party.

DECISION

STATEMENT OF THE CASE

WILLIAM F. JACOBS, Administrative Law Judge. The petition in Case 34–RC–1312 was filed on January 13, 1995,[1] by International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW, AFL–CIO (the Union or the Petitioner). Pursuant to a Stipulated Election Agreement approved by the Regional Director for Region 34, on January 23, a secret-ballot election was conducted on March 2. The tally of ballots showed 29 votes cast for the Union, 36 votes cast against the Union, and 5 challenged ballots which were not sufficient in number to affect the results of the election. On March 9, the Petitioner filed timely objections to conduct affecting the results of the election.

The charge in Case 34–CA–6966–1 was filed on March 9 by the Union, the same date that it filed its objections.

On May 10, the Petitioner, with the Regional Director's approval, withdrew Objections 1, 7, and 11 of the 12 original numbered objections filed on March 9. Those extant then were:

> During the course of the Union's organizing drive, the Employer and his agents:
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> 2. Threatened loss of overtime/plant closing/loss of work and loss of benefits if the Union was selected by the employees.
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> 3. Engaged in electioneering near the polls and company presence was seen during election time frame. They positioned themselves in areas where employees had to pass on their way to vote.
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> 4. Stated that the employer would bargain from scratch if the Union won, thereby threatening employees with loss of existing benefits.
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> 5. Created the impression of and, in fact, engaged in surveillance of employees' Union activities.
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> 6. Permitted employees who opposed the Union to campaign against the Union on working time.
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> 8. Stated that a Union victory would inevitably result in strikes.
>
> 9. Created an atmosphere of fear and confusion by conducting a campaign of intimidation with constant threats of strikes, loss of customers and loss of jobs which would inevitably happen if the Union won.
>
> 10. Threatening to close the plant if the Union was selected by the employees.
>
> 12. Failed to adhere to the agreed upon voter release system.

On May 12, the Regional Director issued a complaint and notice of hearing in Case 34–CA–6966–1, alleging that Eldorado Tool, Division of Quamco, Inc. (the Respondent, Employer, or Company) violated Section 8(a)(1) by repeatedly threatening employees with job loss, plant closure, and loss of benefits and by creating the impression among them that their union activities were under surveillance. The complaint further alleged that Respondent had violated Section 8(a)(1) and (3) by restricting its employees ability to talk to each other during working time and by failing to implement a job reevaluation program. Finally, the complaint alleges that the actions Respondent took against its employees were, of course, discriminatorily motivated.

The complaint seeks a bargaining order based on the allegation that Respondent's conduct was so serious and substantial in character that the possibility of erasing the effects of the unfair labor practices and of conducting a fair rerun election by the use of traditional remedies is slight and that the employees' sentiments regarding representation, having been expressed through authorization cards would, on balance, be protected better by issuance of a collective-bargaining order than by traditional remedies alone.

Based on the alleged violations, the appropriateness of the unit, the majority status of the Union, the timely demand for recognition, and Respondent's refusal to recognize the Union as the exclusive bargaining representative of its employees, the complaint alleges an 8(a)(1) and (5) violation of the Act.

On May 17, the Regional Director issued a Report on Objections in which he noted that the complaint alleges that the Employer committed various violations of Section 8(a)(1) including conduct alleged to be objectionable in Petitioner's Objections 2, 4, 5, 6, 8, 9, and 10, and that, additionally, Objections 3 and 12 raise substantial and material issues of fact including credibility that may best be resolved on the basis of record testimony at a hearing.

Accordingly, the Regional Director determined that Objections 2, 3, 4, 5, 6, 8, 9, 10, and 12 would be consolidated with Case 34–CA–6966–1 for hearing before an administrative law judge. An order consolidating issued concurrently with the report on objections.

These consolidated cases were tried before me on September 11 and 12, 1995, in Hartford, Connecticut.

All parties were represented at the hearing and were afforded full opportunity to be heard and present evidence and argument. Similarly, all parties filed briefs. On the entire record, my observation of the demeanor of the witnesses and after giving due consideration to the briefs, I make the following

FINDINGS OF FACT

I. JURISDICTION

The complaint alleges, the answer admits, and I find that Respondent is, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Union is, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

Respondent, a Delaware corporation, maintains an office and facilities in Milford, Connecticut, where it is engaged in the manufacture and sale of gun drilling tools and machines.

Thomas Comer has been employed by Respondent since November 1984, most recently as a tool crib attendant on the first shift. Comer organized a meeting of employees on December 6, 1994, to discuss and resolve problems at the plant. It was held at the Knights of Columbus Hall in Milford and was attended by approximately 20 employees. These 20 em-

[1] All dates are in 1995 unless noted otherwise.

ployees decided to contact a union to help them solve their problems.

In early January, Comer contacted Local 376 President Russell See, and a meeting with Comer and other interested employees was scheduled for January 5. Employees at the January 5 meeting showed sufficient interest so that See so advised the International and an organizer was assigned. Additional union meetings were held and by mid-January, a majority of Respondent's employees had signed representation cards.

On January 13, the Union sent a letter to Respondent requesting recognition. On the same day, it filed a petition with the Board. On January 20, the parties entered into a Stipulated Election Agreement which was approved on January 23. It provided for the representation election to be held on March 2 between 3 and 4:30 p.m. in the cafeteria on the Employer's premises.

On January 20, a notice was posted on the bulletin board at Respondent's plant announcing the purchase of Quamco, Respondent's parent company, by Precision Castparts Corp. This transaction gave rise to concern among the employees that Respondent might be moving.

In February, both the Union and the Respondent undertook vigorous campaigns in order to win the election. Several of the Respondent's activities became the subject of unfair labor practice allegations and of objections to the conduct of the election.

The UAW wall of shame

In February, according to the complaint, Respondent posted literature at its facility which threatened employees with plant closure if they selected the Union as their collective-bargaining representative. This allegation refers to two identical displays, one on each of the two major working floors. At the top of each display were the words ''PLANT CLOSURES: UAW WALL OF SHAME.'' This portion of the display ran approximately 2 feet 9 inches across and 8 inches in height. Below this heading there was a tombstone made out of computer paper, measuring just under 2 feet wide and slightly under 3 feet long. On the tombstone in capital letters were the letters ''RIP,'' then the name of a specific company that had closed. Every day or two, Respondent added another tombstone, with the name of a different closed company on it. The tombstones of five different companies, other than Respondent, were thus placed at the site of the wall between the time the wall first appeared and the date of the election. No member of management, during this period, ever explained to any employee the meaning of the wall, although the companies appearing on the wall were mentioned at an employee meeting in connection with a statement that the Union cannot promise job security. On March 1, the last tombstone was added to the ''UAW WALL OF SHAME.'' This one bore the name of ''ELDORADO'' along with a question mark.

At some point during the campaign, Richard Cuff, a foreman and admitted supervisor, displayed a tombstone placard in the window of his office. Others were displayed elsewhere throughout the plant.

Regarding the ''UAW WALL OF SHAME'' display, Respondent takes the position that it is not unlawful and not a threat. Rather it is an attempt to show that unionization is not a guarantee of security.

Giving full consideration to the arguments of both the General Counsel and Respondent, it would appear that the substantive part of the display is factual. There is no dispute that the plants specifically mentioned in the display were, in fact, closed and at the time of their closing were UAW represented. There is no doubt that Respondent was free to refer to the closings of unionized plants because the reference was factually accurate and therefore permissible under Section 8(c), absent any prediction that the same thing would occur at Respondent's facility.[2] The addition of Respondent's name on a tombstone with a question mark appears to indicate that Respondent was unwilling to make such a prediction.

Although there is nothing wrong with the facts as presented by the display, the title clearly implies that the closings were the fault of the UAW, either by sin of commission or of omission. Both the General Counsel and Respondent cited, in brief, *Electromation, Inc*.,[3] for its treatment of the tombstone theme. Respondent cited this case for the proposition that use of the tombstone theme, in connection with the closing of unionized shops, is legitimate. The General Counsel takes the position that the company, in that case, after introducing the tombstone theme, specifically issued the following verbal disclaimer:

> Again, and this is very important, we are not saying that the Teamsters caused these companies to go out of business, but we are saying that unions just can't provide job security.[4]

and that without a similar disclaimer, Respondent's use of the tombstone theme is an unlawful threat.

I disagree with the General Counsel's position. An employer is free to advise its employees that certain unionized plants have closed without stating more, without having to become an apologist for the Union.

The Union, in the instant case had approximately a month to counter the argument implicit in Respondent's ''WALL OF SHAME'' display and, indeed, did so. First, the in-house committee distributed its own flyer picturing a number of tombstones with the letters R.I.P. and alleged grievances on each. Then, the In House Committee issued and distributed an open letter addressed to ''Dear Fellow Workers,'' directly addressing the ''WALL OF SHAME'' issue and stating in relevant part: ''If a company closed because of a union, why doesn't it read 'union at fault causes Robert Shaw to close?' How many close or move out that have no union?'' Thus, the Union endeavored to counter the ''WALL OF SHAME'' display, in its own way. And that is the way it should be in a representation election campaign. Although the Board can and should protect employees from threats and other violations of the Act by employers, it is not the province of the Board to force an employer to tailor an otherwise lawful and legitimate campaign message, to sanitize it to the point where the Employer becomes an apologist for the Union.

I find the allegation that the Respondent's ''WALL OF SHAME'' display is a threat of plant closure to be without merit and recommend its dismissal.

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[2] *Blue Grass Industries*, 287 NLRB 274 (1987).

[3] 309 NLRB 990 (1992).

[4] Id. at 1019.

The job reevaluation program

The complaint alleges that Respondent, on February 2, 1995, failed to implement a job reevaluation program because its employees engaged in union activity in violation of Section 8(a)(1) and (3).

The record reflects that Respondent's management first began contemplating instituting a job reevaluation program in December 1993. The purpose was to simplify the existing system and to make it possible for the more productive employees to earn better wages. Contemplated were changes in job descriptions and in employee performance appraisals as well as the installation of a step progression system.

Respondent hired a consultant in December 1993 to work on the job description portion of the new program with grade levels assigned within each job description. The consultant worked on this phase of the program along with management and it was completed in March 1994. Simultaneously, management was also working on the step progression and employee appraisal phases of the new program.

Work on the reevaluation continued slowly through mid-1994. Employees were aware that changes were in the offing but were not advised of the specifics. Meetings with other plant managers were held toward the end of 1994 in order to iron out inconsistencies as to application of the new program to the different divisions.

Since work still remained to be done on the program and Leconte wanted to introduce the new program as a comprehensive wage package rather than piecemeal, he committed himself at a December 1994 meeting with the employees to presenting the program to them by February 1, 1995.

At the time the Union filed its petition on January 13, wage scales had not yet been established and approval had not yet been received from the corporation to implement specific wage changes.

Following the filing of the petition, Respondent was advised by counsel not to implement the reevaluation program because it would result in wage increases for some employees and, as a consequence, the filing of unfair labor practice charges against Respondent. Instead, it was determined that Respondent should follow its traditional approach and it did so. The reevaluation program was not presented to upper management for approval.

On February 2, Respondent posted a notice announcing the completion of the job reevaluation program, the decision not to introduce it at that time and its reasons for not doing so.

These facts clearly reflect that Respondent specifically decided not to implement its job reevaluation program because its employees were engaged in union activity in violation of Section 8(a)(1) and (3) of the Act.[5]

Restriction of employees ability to talk to each other

The February 2 Perez/Zuraw incident

The complaint alleges that Respondent, for discriminatory reasons, on February 2, restricted its employees ability to talk to each other.

The record reflects that Benigno Perez, a machine operator, employed on the first shift on the lower level, was active on behalf of the Union. He attended union meetings and was on the in-house committee.

On February 2, Walter Zuraw, Perez' supervisor, saw him on the upper level, away from his own working area, talking to his wife about some personal matter. Perez' wife is also an employee of Respondent. Perez finished his conversation in a minute or two and left the area. As he was leaving, Zuraw came up to him from behind and asked him to return to his work station and to stay in his own area. According to Perez, Zuraw told him that if he wanted to talk about the Union, to do so on his coffee break or while going to the bathroom, in other words, to do his talking on his own time. Zuraw testified that on February 2, when he saw Perez talking to his wife, he simply told him to return to his work area and said nothing about where he should be doing his talking. They walked back together to Perez' work area. Nothing more was said. Perez was not disciplined. No one from management spoke to Perez' wife about their conversation.

According to Perez, before February 2, he had never received any written disciplining or counseling about talking to fellow employees or staying in his work area during working time. He also testified that he knew of no written rule about not talking to employees during working time. He admitted that although he had never been told before February 2 to return to his work station he was aware that other employees had been so instructed.

According to the General Counsel's witness, Thomas Comer, prior to the Union's organizing campaign, employees were free to move around the plant and talk to other employees during working time, but after the Union's campaign started, Zuraw would watch him whenever he visited the lower level and talked to other employees. Comer testified that Zuraw would watch him until he left the department, but admitted that neither Zuraw nor any other management personnel ever told him not to move around the plant.

Similarly, another of the General Counsel's witnesses, Stanley Lazarkwicz, testified that prior to the organizing campaign Respondent did not have any written policy regarding employees talking to each other during working time and they would, in fact, do so all the time. Lazarkwicz admitted, however, that if employees would just stand around for half an hour or 15 minutes they would be ''doing wrong.'' Supervisors would tell them to go back to work. Finally, Lazarkwicz admitted also that employees are supposed to stay in the area where they are performing their duties unless they are required to go to another area as part of their duties.

To counter the testimony of the General Counsel's witnesses, Respondent offered certain documentation and supporting testimony. Thus, at page 16 in Respondent's employee handbook, under ''General Company Rules,'' rule 17 prohibits: ''Inefficient use of your work time, taking time away from your job to visit, or just plain 'goofing off.''' The handbook does not prohibit talking and, crediting Zuraw, as I do, it does not appear from Zuraw's admonishing of Perez that he was complaining about his talking, per se, or about his talking about the Union but rather about Perez not being at his work station doing his job.

Zuraw testified that he spoke to Perez on numerous occasions before the union campaign started about his being away from his machine while on company time. On these occasions, he would explain to him that he needs to be at his ma-

[5] *Shelby Memorial Home*, 305 NLRB 910 (1991), affd. 1 F.3d 550 (7th Cir. 1993).

chine during production periods. He testified further that he had similar conversations with other employees when their absences from their work stations were excessive. Although Zuraw never felt the need to actually discipline Perez for being away from his machine, he did note in a 1993 review: ''Benny needs to work on limiting any time away from his machine to scheduled break periods.''

This criticism was reviewed with Perez at the time, according to Zuraw, but Zuraw could not recall what, if any, comments Perez made about it. On the other occasions when Zuraw sent Perez back to his work station, he simply returned to his machine without comment. Perez' wife supported Zuraw's testimony to the extent that she admitted that Perez visited her at her work station frequently, just about every day, and she was never cautioned about it by any member of management, presumably because she was at her own work station at the time.

When Perez was shown the 1993 review with the above-quoted notation on it, he denied that it had ever been reviewed with him or that he had ever seen it before. Although Perez' signature appears on the first page of the document[6] and is dated December 14, 1993, it does not appear on the second page of the document[7] which is likewise dated December 14, 1993, and is the page on which Zuraw signed.

With regard to this allegation, there is no dispute that Perez was not discussing the Union with his wife on February 2. He testified, as did she, that they were discussing a personal matter. Perez testified, however, that Zuraw suspected that he was discussing the Union with her and for that reason told him to do his talking on his own time and to return to his work station.

I find Perez' theory most unconvincing and his testimony incredible. There is no evidence that Perez talked to any other rank-and-file employee in the unit about the Union on working time, so he was not suspected, due to a pattern, of being an active campaigner in that respect. He testified that Zuraw suspected him of talking union to his wife. That strikes me as strange. Zuraw appeared to be an intelligent individual. So what reason would he possibly have for suspecting that Perez would go across the plant, up two flights of stairs, and walk over to his wife's working area to discuss union matters with her. Presumably, Perez spends virtually all of his nonworking hours with her. They share a home, a bed, eat their meals together, even drive to and from work together. Perez could talk to her about the Union at anytime. The election was still a month away. I am certain that Zuraw did not mention the Union to Perez on this occasion and was not suspicious that Perez was involved in union activity while chatting with his wife simply because there was no reason to be. Perez' testimony to the contrary is not credited and I find no merit in this allegation.

[6] G.C. Exh. 19a.

[7] R. Exh. 18.I31Joseph Bain, a group leader, testified that he evaluated an employee named Villanueva. One of the matters he commented about was Villanueva's tendency to wander away from his assigned work area. He also testified that he spoke to Villanueva on several occasions about this tendency. Villanueva did not testify. The testimony of Bain supports Respondent's position concerning enforcement of its rule against employees wandering away from their work station.

Respondent's letter of February 6

The complaint alleges that by letter dated February 6, Respondent threatened its employees with job loss if the employees selected the Union as their collective-bargaining representative.

This allegation refers, in particular, to the following partial paragraph which the General Counsel cites in his brief: ''The UAW organizer may claim that you cannot lose in negotiations. Don't tell that to the UAW employees of Delco—they lost their jobs.'' The General Counsel argues that this statement violates Section 8(a)(1) of the Act because it is made without any objective considerations as to why the GM Delco plant in Bristol, Connecticut, closed, because it suggested that Respondent's employees had job security and that they would jeopardize this security if they chose to be represented by the Union and because it failed to provide the necessary objective basis for Respondent's implicit claim that unionization would imperil employee job security for reasons beyond its control.

The record indicates that the February 6 letter was sent by Leconte to Respondent's employees at their homes. It was the first in a series of such letters.

The February 6 letter draws the attention of employees to the fact that Delco, a unionized plant, closed with a consequent loss of jobs. There is no dispute as to the accuracy of these facts. Delco was unionized, it did close, and employees did, in fact, lose their jobs. The letter contains no prediction, explicit or implicit, that if the employees vote the Union in, Respondent will necessarily or probably suffer a similar fate. Likewise, the letter does not claim that the closing of the Delco plant was the fault of the Union. Under these circumstances, I find no basis for finding that Respondent has any obligation to supply objective considerations for any reason or purpose.[8]

The February 9 Perez/Zuraw incident

On February 9, Zuraw happened to notice three of his employees congregated in his department, talking.[9] They were discussing work related matters. The group consisted of Benigno Perez, John Loftus, and Ed Koenen, all of whom work together and share jobs. Because they did work together, Zuraw did nothing about it and left the immediate area. When he came back, 10 to 15 minutes later, they were still there. Without knowing what they were talking about, Zuraw told them all to go back to their work stations. Perez appeared somewhat agitated and, raising his voice, asked Zuraw why he was picking on him. Zuraw replied that he was not picking on Perez, that he was speaking to the group. Perez accused Zuraw of singling him out. Zuraw denied it and said that if they needed to converse, to do it during their breaks or at lunchtime. The employees all returned to their work stations.

Between an hour and an hour and a half after this conversation, Zuraw was in the process of bringing some work into Perez' area when Perez stopped Zuraw to apologize for his loud tone of voice during the first conversation. He explained that he felt that Zuraw was putting pressure on him.

[8] *Blue Grass Industries*, supra.

[9] The incident, as described in the text is based primarily on the credited testimony of Walter Zuraw. Where there are discrepancies between the testimony of Perez and Zuraw, the latter is credited.

Zuraw said that he had to put pressure on Perez because ''they'' put pressure on him to make Perez stay in his work area. Zuraw added that he was just doing his job, explaining that if his boss had come downstairs and had seen everybody congregated he would have been the one to have had to answer, because he is the one responsible for production, and if everyone is congregating the production is not getting done.

At this point, Perez began to explain to Zuraw why he thought a union was necessary at Eldorado. He mentioned benefits, holidays, and working conditions. Zuraw apparently disagreed, but stated that he respected Perez' opinion and wished that Perez would respect his as well. He added, ''Hopefully, when all this is over, things will get back to normal.'' The conversation ended and no action was taken against Perez. I find no violation here.

The events of February 10

On February 10, Human Resources Director Judith Johnson came out onto the floor and called Stanley Lazarkwicz, a toolmaker and rank-and-file employee, and union activist and in-house committee member, into her office. Johnson had a union flyer in her hand which she asked Lazarkwicz to explain to her. He did so.

After a brief discussion of the flyer, the conversation turned to pensions. Some days earlier, an employee had advised Johnson that employees had been asking whether they could participate in both the 401K program and Respondent's own noncontributory pension plan as well. This employee asked Johnson to talk to Lazarkwicz about it and she did so at this point. According to Lazarkwicz, whom I credit, Johnson told him that there was no law saying that Respondent had to give its employees a pension. She then said, ''If the Union comes in here, you're going to lose all of your benefits. You're going to have no dental, no insurance, no vacation, no raises.''[10] Johnson continued, ''And if the Union comes in, they're going to want labor grades. They're going to demand equal overtime. People are going to refuse to work out of their labor grades. Eldorado [will] have to hire more people. . . . Its going to cost the company more money which they can't afford because they're a small shop, and eventually . . . they [will] have to close.''

Lazarkwicz testified that Johnson mentioned strikes on several occasions during the conversation and stated that if a strike occurred, the place would close down and ''it would be the end of Eldorado.''

Shortly after the February 10 meeting with Johnson, Lazarkwicz attended a union meeting. At this meeting, Lazarkwicz told those present, about 24 of Respondent's employees, everything that Johnson had said, including how the employees would lose their benefits, that the place would close and there would be no more Eldorado.

I find Johnson's threat that the employees would lose all their benefits, if the Union got in, violative of Section 8(a)(1) of the Act.[11] Similarly, in threatening that the plant would close because of the Union without supplying objective considerations in support of her prediction, I find the statement violative of the Act.[12]

Respondent's letter of February 13

The complaint alleges that by letter dated February 13, Respondent threatened its employees with job loss if the employees selected the Union as their collective-bargaining representative.

The allegation refers, in particular, to the letter's reference to five area UAW plants that either totally or partially closed down, including the Delco plant with the phrase added, ''Vote 'No' to THE UAW AND JOB INSECURITY.'' The General Counsel takes the position that the letter violates Section 8(a)(1) because it did not include any ''objective considerations'' in its discussion of the closings, because this letter and the others suggest that Respondent's employees had job security and that they would jeopardize this security if they chose to be represented by the Union and because of the inclusion in the letter of a misleading assertion to the effect that GM Delco employees ''lost'' their jobs.

International Representative Linda Lewis, who works for Region 9A of the UAW, testified that she was employed by Delco for 21 years. She stated that when the plant closed in 1995, the 800 UAW employees did not lose their jobs as Respondent's letter of February 13 stated. Rather, only a select few might have lost their jobs. Others were transferred to other plants within the state, retaining the same benefits and wages. Under the UAW contract with GM, different packages were offered to between 300 and over 400 employees of the closed plant and were accepted by 200 of them. Various buyouts were offered and accepted by still others. Although Lewis was shown a copy of Respondent's February 13 letter, the Union did not respond to it to set the record straight.

The February 13 letter, like the February 6 letter, attempts to draw the attention of the employees to the fact that several unionized plants closed down, in whole or in part, and the fact that they were unionized was no guarantee of security. Again, there is no dispute as to the accuracy of the facts. These plants did, in fact, close, in whole or in part, despite the fact that they were unionized. The February 13 letter, like the earlier one, contained no prediction which might require supporting objective considerations under certain Board case law.[13] Nor did it, in any way, specifically fault the Union for the closings.

According to Lazarkwicz' credited testimony, Johnson also told him on this occasion that the union would force respondent to pay higher wages which would make it charge more for its product, thus forcing its customers to go elsewhere to purchase their supplies.

Under these circumstances, contrary to the General Counsel, I find no basis for requiring Respondent to get involved in researching the specific reasons why these particular employers failed. It is sufficient, for Respondent's purposes, to advise employees that union plants close as well as nonunion plants, pointing out in the process that union representation alone does not guarantee a company or its employees finan-

[10] Johnson's description of this conversation is entirely different from that of Lazarkwicz. Where the two are contradictory, Lazarkwicz' version is credited.

[11] *Waste Management of Utah*, 310 NLRB 883 (1993); *Sivall's, Inc*., 307 NLRB 986 (1992).

[12] *Overnite Transportation Co*., 296 NLRB 670 (1989), enfd. 938 F.2d 815 (7th Cir. 1991).

[13] See *Bi-Lo*, 303 NLRB 749 (1991), enfd. 985 F.2d 123 (4th cir. 1992).

cial success. If a union considers it necessary to discuss why a particular plant closed at a time it was representing that plant's employees, it would probably be in a better position to do so than would another company, not familiar with the facts of the closing. Similarly, if the Union had the information that Lewis testified to at the hearing, that many of the Delco employees obtained employment elsewhere after Delco closed, it should have told Respondent's employees about it. Is it Respondent's obligation to make the Union's case?

I find that the February 13 letter did not violate the Act.

Respondent's letter of February 15

The third and final letter in the series of letters personally addressed and signed by Leconte was also alleged to have threatened employees with job loss if they selected the Union as their collective-bargaining representative. It consists of 15 questions which the employees were urged to ask the UAW organizer. The General Counsel, in brief, specifically discusses only one of the 15 questions as violative of the Act: ''Will the UAW guarantee that I won't lose my job just like the UAW represented employees at Delco, Century Brass and the Torin Company?''

Again, the General Counsel argues that this letter is a threat of a job loss because it suggests that Respondent's employees had job security and that they would jeopardize this security if they chose to be represented by the Union and because this letter, like the others which preceded it, failed to provide the necessary objective basis for Respondent's implicit claim that unionization would imperil employee job security for reasons beyond its control.

I find Respondent's letter of February 15 basically innocuous. Like the earlier letters, it makes no predictions but merely mentions certain unionized plants which closed and suggests that employees ask the UAW organizer about it. The General Counsel's argument that this letter threatens employees with job loss is far too tenuous to support a finding of 8(a)(1) violation.[14] I recommend dismissal of the allegation.

The February 16 meeting—Leconte

The complaint alleges that Respondent, on February 16, through Leconte threatened employees with loss of benefits if they selected the Union as their collective-bargaining representative. This allegation refers to a meeting with employees which Respondent held on that date and at which Leconte addressed the assembled group. All employees and management personnel attended.

Leconte testified that he had a prepared text from which to speak at the February 16 meeting. He testified that after studying the text for a day and a half he decided that it would be more effective if he spoke from index cards. He transferred the text of the speech to the cards and read from these to his audience.

Leconte testified that, at the very beginning of his speech, he indicated to the employees that he was taping his speech in order to protect himself from unfair labor practice charges, that he placed the recorder inside the podium, turned it on, and did, in fact, tape the speech. He testified, further, that he did not deviate from the index cards, from which he read his speech.

Lazarkwicz was one of the employees who attended the February 16 meeting and testified concerning the content of Leconte's speech. According to Lazarkwicz, Leconte stated that he was aware that the Union was trying to get in and if it did, it could not guarantee anything. The employees would lose everything, their benefits—no dental, no insurance, no raises, no vacation, no sick days. The employees would have nothing, they would start from scratch.

Employee Michael Zander also attended this meeting and testified that Leconte, among other things, discussed benefits. According to Zander, Leconte stated that if the Union came in, the employees would start at nothing, that anything that the employees had as of the time of the meeting, there was no guarantee they would still have it if the Union came in, and that they ''would start from scratch, zero.''

Employee Ivory Townsend, another employee who attended the February 16 meeting and testified, stated that Leconte said that if the Union came in, the employees would ''start from scratch.'' They would have ''no benefits, no nothing.''

Thomas Comer testified that at this meeting, Leconte stated that if the Union got in, the employees would lose all of their benefits, everything would come off the table. He said that the company did not have to give the employees anything they had at the time. Finally, according to Comer, the B-grinders who were getting an extra $1.50 for running three machines would lose that money if the Union got in.

Leconte testified that after the close of the February 16 meeting, he took the tape home with him. He then brought the tape back to the plant to tape another speech he was going to give at a second employee meeting on March 1. He intended to tape the second speech on the second side of the tape. However, Leconte forgot to turn on the tape at the beginning of his second speech and did not remember to do so until he was part way through it. He decided that it was pointless to begin taping part way through and took the tape home after the close of the March 1 meeting. Subsequently, it was lost and there is no record of either actual speech.

I credit the General Counsel's witnesses in that Leconte did, in fact, make the statements they attributed to him. These statements were violative of the Act and I find the allegation meritorious.[15]

The February 16 meeting—King

The complaint alleges that Respondent, on February 16, by Kenneth King, impliedly threatened its employees with job loss if they selected the Union as their collective-bargaining representative.

Employee Michael Zander testified that Respondent's director of sales and marketing, Kenneth King, spoke at the February 16 meeting and told the assembled employees that if customers were to find out that Respondent was a union shop, they would be liable to do business elsewhere. King explained that these customers would want to be sure of getting the product they need, and if Respondent had a union with the potential for a strike, then the customers could not be sure of being able to get their product. King did not testify.

[14] *Blue Grass Industries*, supra.

[15] *Waste Management of Utah*, supra.

The General Counsel argues that King's statements, when viewed against the background of Respondent's other threats of job loss and plant closure, are coercive and violative of Section 8(a)(1) of the Act.

I credit Zander that King did, in fact, make the statement attributed to him. King did not testify and so did not deny making the statement. The statement was in the form of a prediction and therefore should have been accompanied by some form of objective support. King's failure to provide the objective support required, renders his prediction violative of the Act.[16]

Respondent's letter of February 17

The complaint alleges that by letter dated February 17 Respondent, by Richard Cuff, threatened employees with job loss if they selected the Union as their collective-bargaining representative.

Once again, as in the case of Leconte's three letters, the General Counsel argues that Cuff's letter was violative of Section 8(a)(1) of the Act because it states, ''The Union cannot guarantee you anything other than possible irreparable damage to the business which would affect all our jobs.'' It offers, however, no objective considerations to support the statement.

In addition to the above-quoted portion of the February 17 letter, there appear other passages which provide context for the portion found objectionable by the General Counsel:

> I am sure our competitors have already heard that there is an on-going attempt to unionize Eldorado and have taken the opportunity to inform our customers of the possibility of a strike which would effect delivery of their orders and suggest they place orders with them to eliminate any production interruptions at their company. If there was a strike it could seriously influence the strong in-coming order rate we have been experiencing. *We* can not afford this type of loss, its not beneficial to anyone, it could affect jobs.

Cuff's totally unsupported claim that competitors were already in the process of taking Respondent's customers away and his prediction of irreparable damage based thereon, unaccompanied by any statement containing an objective factual basis for his claim and prediction is violative of the Act.[17]

The events of February 24

The complaint alleges that Respondent, by Kenneth King, on February 24, threatened its employees with plant closure if they selected the Union as their collective-bargaining representative.

On February 23 and 24, Peter Rudd, former president of Eldorado, and currently one of its independent sales representatives, toured Respondent's facilities accompanied by Kenneth King, then Respondent's vice president. Initially, Rudd had been going around the shop checking up on the status of a number of orders for some of his customers. Later, he walked around speaking to employees, visiting with them, and talking about various things including the Union.

On the morning of February 24, employee Michael Zander was visiting the office of Phil Pelletier, one of Respondent's service representatives, on a work related problem when Peter Rudd entered, followed shortly by Kenneth King. Rudd and Zander, who had known each other for 17 years and had a good relationship, greeted one another and exchanged pleasantries. Then Rudd mentioned having noticed the union literature that was hung on the walls. He asked Zander what was going on and why the union campaign was taking place. Zander replied that he thought a union was needed and gave his reasons. When King came into the room, he asked the same questions and again Zander explained his position. King and Rudd both stated that they felt that a union could not solve all the problems that Zander had mentioned.

King then began to discuss customer orders. He said that incoming customer order forms have a question whether a shop is union or nonunion and that customers would be more apt to do business with a nonunion shop because they are concerned with the delivery of the product they order. Rudd agreed with King's statement. King added that Respondent might not get business from a customer concerned about not being able to get the product he needs in case of a strike. Rudd again agreed.

Zander then mentioned that the employees had been told that none of Respondent's competitors had unions. Rudd said that this was true but that at one time, two of them had unions, closed down operations, then later reopened without a union. King, though present, did not comment.

The description of the February 24 events, as discussed above, is based on the credited testimony of Zander. Neither Rudd nor King testified.

The General Counsel takes the position that Rudd's statements were made as Respondent's agent with apparent authority, and adopted by Respondent through King and since these statements were made without accompanying objective considerations for the proposition that unionization would jeopardize job security for reasons beyond Respondent's control, they constitute an unlawful threat of plant closure.

I find merit in the General Counsel's position both as to the agency of Rudd and as to the violative nature of the statements of both Rudd and King.[18]

The March 1 meeting threats of loss of benefits

The complaint alleges that Respondent, on March 1, by Kenneth Leconte, threatened employees with loss of benefits if they selected the Union as their collective-bargaining representative. This allegation refers to a meeting with employees which Respondent held on that date and at which Leconte again addressed the assembled group. He announced before doing so that he would tape his address. As noted, he failed to do so.

Leconte testified that he had a prepared script from which he intended to address his audience and did not deviate from the written script except in two specific instances. One deviation was to address an anonymous letter which had recently come to light which Leconte felt contained certain misinformation which had to be corrected. The other was the re-

[16] *DTR Industries*, 311 NLRB 833 (1993), enf. denied 39 F.3d 106 (6th Cir. 1994); *Pentre Electric*, 305 NLRB 882 (1991), enf. denied 998 F.2d 363 (1993).

[17] *Long-Airdox Co.*, 277 NLRB 1157 (1985); *Bay State Ambulance*, 280 NLRB 1079 (1986); and *Laidlaw Transit*, 297 NLRB 742 (1990).

[18] See cases cited supra.

sult of Leconte losing his place and failing to include a reference to Russell See's Mercedes Benz. Following his speech, a film was shown.

Despite Leconte's statement that he did not deviate from the language of his printed script, except as noted, Lazarkwicz testified that Leconte once again stated that if the Union came in, the employees would have nothing, no insurance, no dental, no vacation, no raises, no benefits, nothing. He said that the Union could not guarantee the employees anything. Leconte did not specifically deny making the statements attributed to him by Lazarkwicz.

Ivory Townsend supported Lazarkwicz' testimony. He testified that Leconte said, ''If the Union gets in, we start from scratch, no benefits, no nothing.''

I credit Lazarkwicz and Townsend and find Leconte's statements violative of Section 8(a)(1) of the Act.[19]

Creation of the impression of surveillance

The complaint alleges that Respondent, on March 1, created the impression among its employees that their union activities were under surveillance by Respondent.

According to the script, which Leconte testified he read at the March 1 meeting, Leconte told the employees:

> I've heard that a union supporter at a recent union meeting stated that the company is hiring people that don't know anything. That's insulting to both employees and the company.

Comer testified that at the meeting on March 1 Leconte stated that at one union meeting somebody said that the Company was hiring incompetent people and that that statement was an insult to the people. Comer testified further that he had made that statement at the union meeting.

The General Counsel argues that Leconte's comment created the impression among the employees in attendance at the March 1 meeting that their union activities were under surveillance in violation of Section 8(a)(1) of the Act. The General Counsel is correct under current and applicable case law.[20]

The events of March 2 Union Objection 12 the voter release agreement

On the morning of March 2, the day of the election, members of management met with their attorney, John Glenn. Glenn instructed them that from the time the NLRB agents arrive at the plant, through the course of the election, management personnel were not to go into or look into the cafeteria.

At 2:30 p.m., representatives of Respondent and the Union met with the Board agent in a preelection conference to discuss, among other things, the method by which employees would be released to cast their ballots. Leconte had drafted a schedule beforehand providing for the release of voters by department group leaders during the election period, and presented this schedule to the Board agent. The Union, however, objected and requested a mass release of all voting employees at once. The Respondent objected to this method of release as too disruptive. The Union then suggested that the PA system be used. The Respondent objected, however, on grounds that there were dead areas in the building where the PA system could not be heard, either because of machine noise, the use by some employees of head phones, or the fact that the speakers are too far away from some work stations. Respondent's witnesses credibly testified that they wanted everyone to have the opportunity to vote. After some discussion, it was agreed that despite the problems with it, the PA system would be used, and the Board agent would page the employees himself from the cafeteria. Supervisors, it was agreed, would not be directly involved during the election.

After the preelection conference in the conference room was concluded, some of the conferees went downstairs to the cafeteria where they were joined by Comer and perhaps other individuals to examine the polling area and discuss election procedures. Releasing of voters was still under discussion.

After the preelection conference and inspection of the polling area was completed, Johnson and other members of management still had qualms about the effectiveness of the PA system as a vehicle for release purposes because of the difficulty hearing announcements. It was decided that it would be wise just to have the group leaders know that they should be listening for the Board agent's page. After this decision was made, Johnson started back toward her office but was intercepted by a group leader who advised her that one employee was absent. Johnson returned to her office, then went out on the floor and told the group leaders about listening for the page. She then returned to her office. It was just about 3 p.m. and the polls were about to open or else had just opened.

Johnson made a phone call from her office to determine whether the absent employee would be reporting to work. She found out that the employee would be reporting and again went out on the floor to so advise the group leader of this fact. It was apparently after 3 p.m. by this time, because either the group leader or another employee informed her that it was very difficult to hear. Johnson listened for a few minutes. The Board agent's page was coming over the PA system but Johnson could not hear what he was saying. Johnson returned to her office and tried to call the cafeteria to tell the Board agent to speak loudly, to shout, but although the phone rang 10 or 15 times, no one picked it up.

The plant's basement is divided into two levels, an upper basement and a lower basement. The upper basement includes the cafeteria and the pre-run area where employee Ivory Townsend works. A stairwell leads down from the upper basement to the lower basement where Benigno Perez, Ed Koenen, John Loftus, and two night shift employees work in the gun drilling department. When the announcement came over the PA loudspeaker, Townsend and the other employees located on the upper basement level were scheduled to vote first. They heard themselves paged and did so. Thereafter, the announcement came over the loudspeaker for the employees on the lower basement level to vote. However, according to Perez, the PA system cannot be heard where he works and he did not hear the announcement from the Board agent. Rather, Zuraw came into the area and told the five employees there to go and vote and they did so.

According to the tally of ballots and the eligibility list, all 70 eligible voters cast ballots in the election, 65 who apparently heard the Board agent's page and the 5 located on the

[19] *Waste Management of Utah*, supra., *Sivalls, Inc*., supra.
[20] *United Charter*, 306 NLRB 150 (1992).

lower basement level whose page was relayed to them by Zuraw.

Among the objections to the representation election filed by the Union, Objection 12 states that the Employer failed to adhere to the agreed-upon voter release system.

The facts clearly reveal that Respondent did, in fact, deviate slightly from the agreed upon voter release agreement but that Zuraw's notification to the five employees that they had been paged was necessary, innocuous, and resulted in five employees voting who might otherwise have missed the opportunity to cast their ballots. I recommend that Objection 12 be overruled.

Union Objection 3

Supervisors looking into the cafeteria[21]

Among the preelection conferees who inspected the polling area just prior to the opening of the polls at 3 p.m. were, Linda Lewis and Thomas Comer for the Union, Kenneth Leconte for the Respondent and, of course, the Board agent. All apparently entered the cafeteria through its front entrance, at the foot of the stairwell. All had to have noticed that there was a clear 36-inch glass window in the door but no one suggested that the window be covered despite the fact that both Lewis and the Board agent had previous experience with NLRB elections.

Inside the cafeteria, the board agent had set up the booth where employees mark their ballots. Curtains enclose the booth so that no one can see how the voter marks his ballot. Anyone looking into the cafeteria would see the board agent, observers and any employees waiting in line to vote or exiting after voting but could not see into the booth.

Townsend testified that from his work station on the upper basement level in the pre-run area, he can see the stairs and the cafeteria and that during the election on March 2, he saw his supervisor, Walter Zuraw, in the area where the stairs go past the cafeteria door. According to Townsend, he saw Zuraw go up and down the stairs eight times during the election and also saw him look through the cafeteria door.

Townsend testified that he also saw Leconte come down and go back up the stairs once. According to Townsend, Leconte looked through the cafeteria door, as he went back upstairs.

Comer, the Union's observer during the election, sat at the observer's table facing the door to the cafeteria located at the foot of the stairs. Most of the voters used this door to enter and exit the cafeteria although two other entrances were also in use.

Comer testified that during the election he saw Leconte come down the stairs on one occasion and go into the next department but did not state that he saw him look through the window of the door to the cafeteria. He also testified to seeing Zuraw come from the gun drilling area, then look through the window of the cafeteria door once, for a couple of seconds. He did not complain to the board agent at the time.

Leconte testified that during the election period, he did not go into the cafeteria nor deliberately look into the cafeteria. He explained that there are two long approaches to the cafeteria door at the foot of the stairwell, each about 20 feet long. Going down the stairs, there is no problem avoiding looking into the cafeteria because it is first on one's right, then behind anyone descending. However, there is a problem coming upstairs because one first walks down the 20 feet of hallway on the upper basement level, then comes to a fire door. When the fire door is pulled open, one must go around it to get onto the landing at the foot of the stairs. Before turning right to mount the stairs, one finds oneself facing the window of the cafeteria door and cannot avoid it. As one turns right, the cafeteria door is then on the left and the stairs are then straight ahead.

Leconte testified that he ordinarily goes up or down the stairs half a dozen times a day on general business. On the day of the election, he went up the stairs once. That one time, he noticed nothing going on inside the cafeteria.

Zuraw testified that since he has duties on both the upper floor and the basement floors, he goes up and down the stairs 30 times on a normal day, always by means of the only interior staircase in the plant, the most direct route. On the day of the election, during the balloting, Zuraw had occasion to go upstairs to perform his duties as usual but did so less frequently than normal. Zuraw stated, that because of the instructions from Respondent's counsel that morning, he made a special effort not to look into the cafeteria when using the stairs but looked at the stairwell itself.

I credit the testimony of both Leconte and Zuraw to the effect that neither one purposefully looked through the cafeteria door window and that if either one or the other of them glanced at or through the cafeteria door window as they passed by, it was accidental, inconsequential and did not seriously adversely affect the laboratory conditions of the election.[22] I recommend dismissal of this portion of Union Objection 3.

Supervisors on shop floor

Judith Johnson was observed out on the shop floor during the voting period. Certain reasons why Johnson was out on the floor during the voting period have already been discussed. There were other reasons as well. Linda Lewis and Thomas Comer, during the preelection conference and poll area inspection, expressed concern about an antiunion poster still hanging, after all posters, it was agreed, should have been removed. Since it was Johnson's responsibility to see to it that all antiunion posters had been removed, she assured both Lewis and Comer that it would be done. After the polling area inspection and just after the polls opened, Johnson personally went around to inspect the various bulletin boards to make certain that all antiunion material had been taken down. She found that none of the antiunion material was still posted so went directly to the office located next to her own to join other members of management who had gathered there for the duration of the election.

Witnesses Lazarkwicz and Zander were called to testify to the activities of management personnel out on the floor during the election. Lazarkwicz testified that in order to go down to vote at the polling place in the cafeteria, employees working on the top floor would have to use the stairs to get there. From his work station in the toolroom, Lazarkwicz

[21] Although the Union's Objection 3 does not specifically deal with supervisors looking into the cafeteria during the polling period, the Union's brief addresses such incidents.

[22] *Country Skillet Poultry Co.*, 271 NLRB 847 (1984).

could see the area around the head of the stairs. When he went to vote, which he mistakenly testified was about 2 p.m., he passed by Johnson in this area as well as Foremen Cuff and Zuraw. According to Lazarkwicz, they were ''lingering'' at the head of the stairs in the center of the shop. On his return from voting, he noted that they were still there and he had to pass by them again. Later, but still during the voting period, Lazarkwicz had to go downstairs to perform job-related duties and once again he noted that they were still there. Johnson was in that area for a couple of hours, according to Lazarkwicz. Rank-and-file employees were working in this area during the voting period. The polling area and the cafeteria were not visible from the area at the top of the stairs where the supervisors were seen.

Zander testified that his work station is close to the head of the stairwell and that during the election, Johnson and Cuff, and for a short period of time, Leconte and Zuraw were present in that area. He stated that it was unusual for Johnson to be there but the others could all have been there for work-related reasons, albeit for a longer period of time than usual. Johnson was there once for about 20 minutes, according to Zander. When Zander and the other employees went downstairs to cast their ballots, none of the members of management approached them, nor in any way interfered with them as far as the record indicates.

Union Objection 3 states that the Employer and his agents:

> Engaged in electioneering near the polls and company presence was seen during election time frame. They positioned themselves in areas where employees had to pass on their way to vote.

In my opinion, the activity of the various supervisors, during the polling period, does not warrant a finding of objectionable conduct since they were on a different floor from that where the election was taking place, completely out of sight of it. Although a number of employees, of necessity, had to pass by the supervisors in order to get to the stairway leading down to the cafeteria, none were approached, interfered with or spoken to as they did so. I find the objection without merit and recommend its dismissal.[23]

Union Objections 3 and 6 antiunion campaigning on working time electioneering near polls the baseball poster

About a week before the election, Respondent hung two identical posters, one on the top floor by the timeclock, the other in the cafeteria. The posters bore a baseball theme. It pictured a baseball and the words, ''Our customers are our biggest fans . . . but we're not the only game in town.'' This poster made no reference to unionization, the election or the Union. According to Johnson, it was just one of many posters placed on the bulletin boards by management to encourage production and quality.

On the day of the election, both baseball posters were still on display. Both Lewis and Comer were aware of this fact but neither complained about them nor requested that they be removed. They remained posted throughout the election.

The antiunion ''Bribe'' poster

On the day of the election, after the preelection conferees moved to the cafeteria and were joined by Comer, he brought to their attention the fact that there was still an antiunion poster posted somewhere upstairs which referred to an alleged bribe to a UAW official. Since the Company had attempted to remove all antiunion material from the bulletin boards the evening before the election, Leconte explained that it must have been an oversight and promised to take it down immediately. As it turned out, the poster had been posted on a production board instead of a regular bulletin board and for that reason had been missed by the employee assigned to remove the posters. It was taken down within the next 10 minutes, and consequently when Johnson went out on the floor later on, looking for the poster, she never found it.

The vote ''No'' T-shirt

Comer testified that on the morning of the election he saw in the sandblasting department, a T-shirt bearing the words, ''UAW Vote No.'' This shirt belonged to one of the employees who had it spread out between a machine and a beam, so that it could be read by anyone passing through the heavily trafficked area. The shirt remained as described for about 2 hours before Johnson, Comer thinks, ordered it removed before the election.

The Union's Objection 6 states that the Employer and its agents: ''permitted employees who opposed the Union to campaign against the Union on working time.''

The Union, in its brief, discusses the baseball poster, the bribe poster, and the Vote ''No'' T-shirt. It is not clear, however, whether the posters and T-shirt fall under Union Objections 3, 6, or both. In any case, I find that no one considered the baseball poster antiunion at the time of the election, otherwise the Union would have requested its removal during the inspection of the polling area. As for the bribe poster and the T-shirt display, the Union requested their removal before the polls opened, the Company immediately complied and they were no longer on display during the polling period. Even before their removal, they were nowhere near the area of the polls but rather upstairs on another floor. I do not believe the displaying of these two objects adversely affected the laboratory conditions of the election or gave the Employer any unfair advantage. I recommend dismissal of the objections based on the display of these items.

Although I have found none of the incidents, which are alleged to have occurred on March 2, objectionable, those objections which are based on incidents which I have found to be violative of the Act, I likewise find objectionable. Thus, I find Union Objections 2, 4, 5, 9 and 10, in whole or in part meritorious. I find no evidence to support Union Objection 8 and recommend its dismissal.

The appropriateness of a *Gissel*[24] bargaining Order

The General Counsel argues that this case falls within the second category of *Gissel* cases and that a bargaining order is appropriate because in the instant case ''the possibility of erasing the effects of past practices and ensuring a fair election (or a fair rerun) by the use of traditional remedies,

[23] *Roney Plaza Management Corp.*, 310 NLRB 441 (1993).

[24] *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969).

though present, is slight and that employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order.''

In this decision, I have found that Respondent has committed one violation of Section 8(a)(1) and (3) of the Act and several independent violations of Section 8(a)(1). The 8(a)(3) violation found involves Respondent's failure to implement its reevaluation program which it decided not to institute for fear of being found in violation of the Act. Inasmuch as Respondent has claimed all along that it is anxious to implement the program, an order to do so from the Board, I am confident, would solve the issue in quick order.

With regard to the 8(a)(1) violations found, three of them involve threats of loss of benefits on February 10 and 16, and March 1. The threat of loss of benefits is not ordinarily considered among the ''hallmark'' violations justifying a bargaining order,[25] particularly when delivered in the context of ''negotiating from scratch.'' The posting of a proper notice should suffice to inform the employees of their rights under Section 7 of the Act and of the requirements of good faith bargaining.

Four of the remaining 8(a)(1) violations found involve threats of plant closure or job loss on February 10, 16, 17, and 24. Direct threats of plant closure or job loss are considered ''hallmark cases'' where, as in such cases as Koons Ford of Annapolis, Inc.[26] the official making the threat is president and owner of the company, has the capability and control to follow through on his threat, and tells his employees that he does not need the business and if the union wins the election he will close down the place and move to Florida.

The incidents involved in the instant proceeding, however, do not involve any such direct, blatant and personal threats. Rather, they are all indirect, implied, impersonal and dependent on the actions of third parties, the union, competitors or customers. They are, in effect, predictions which are converted, under Board law, into threats by the predicting party's failure to support his predictions with factual bases. These indirect or implied threats, completely dependent on the actions of third parties and beyond the control of the Respondent to enforce cannot have the same effect on Respondent's employees as the type exemplified in the Koons citation, supra. and, though serious in nature, should not be used to justify a bargaining order by themselves, at least not under the circumstance present here. Finally, the 8(a)(1) impression of surveillance violation is not ''hallmark'' and will not support a bargaining order.

In my opinion, Respondent's conduct did not rise to a level which warrants a bargaining order.[27] I do not find it sufficiently egregious under the circumstances present, to preclude the likelihood of a fair election.[28] However, since the unfair labor practices found are serious and occurred during the critical period, they must also be considered objectionable.[29] I shall therefore recommend that the election be set aside and that a second election be directed.[30]

[25] *NLRB v. Chester Valley, Inc*., 652 F.2d 263 (2th Cir. 1981).

[26] 282 NLRB 506 (1986).

[27] *Harrison Steel Castings Co*., 262 NLRB 450 (1982), affd. 735 F.2d 1049 (1984).

[28] Almet, Inc., 305 NLRB 626 (1991), enfd. 987 F.2d 445 (1993).

[29] Id.

[30] Id.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The activities of the Respondent set forth in section III above, found to constitute unfair labor practices occurring in connection with the operations of the Respondent described in section I above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent unlawfully failed to implement its job reevaluation program, I shall recommend that it be ordered to do so and to make whole all employees for any loss of wages and benefits they would have earned since February 2, 1995, but for the unlawful failure of Respondent to implement its job reevaluation program. Backpay, if any, shall be computed in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest thereon computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). See also *Isis Plumbing & Heating Co*., 138 NLRB 716 (1962). I shall also recommend that Respondent be required to post an appropriate notice.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By failing to implement its job reevaluation program because its employees were engaged in union activities, Respondent violated Section 8(a)(1) and (3) of the Act.

4. By threatening its employees with plant closure, loss of benefits, and job loss because they engaged in union activities and by creating the impression that their union activities were under surveillance, Respondent violated Section 8(a)(1) of the Act.

5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[31]

ORDER

The Respondent, Eldorado Tool, Division of Quamco, Inc., Milford, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to implement its job reevaluation program because of its employees' union activities.

[31] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Threatening its employees with plant closure, loss of benefits, and job loss because of their union activities.

(c) Creating the impression that their employees' union activities are under surveillance.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their Section 7 rights.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Immediately implement its job reevaluation program.

(b) Make whole all employees for any loss of wages and benefits they would have earned since February 2, 1995, but for the unlawful failure of Respondent to implement its job reevaluation program.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying all payroll records and reports, and all other records necessary to analyze and determine the amount of lost wages and type of lost benefits due under the terms of this Order.

(d) Post at its Milford, Connecticut facility copies of the attached notice marked ''Appendix.''[32] Copies of said notice, on forms provided by the Regional Director for Region 34, after being duly signed by the Respondent's representative, shall be posted by the Respondent immediately upon the receipt thereof and maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by other material.

(e) Notify the Regional Director in writing within 60 days from the date of this Order, what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint be, and is, dismissed insofar as it alleges unfair labor practices not specifically found herei

IT IS FURTHER ORDERED that the election conducted March 2, 1995, be, and is, set aside and the Regional Director is directed to conduct a second election whenever he deems it appropriate.

[32] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT to implement our job reevaluation program because they engaged in union activities.

WE WILL NOT threaten our employees with plant closure, loss of benefits, or job loss because of their union activities.

WE WILL NOT create the impression that our employees' union activities are under surveillance.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL immediately implement our job reevaluation program.

WE WILL make whole all employees for any loss of wages and benefits they would have earned since February 2, 1995, but for our unlawful failure to implement our job reevaluation program.

> All our employees are free to become or remain, or refrain from becoming or remaining members of any labor organization.

ELDORADO TOOL, DIVISION OF QUAMCO, INC.